

**PT 99-50**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>CITY OF SPRINGFIELD (lessor)</b>	)		
<b>LAKE SPRINGFIELD CHRISTIAN</b>	)		
<b>ASSEMBLY (lessee)</b>	)		
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>96-84-102</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>22-32.4-176-005</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. James M. Lestikow appeared on behalf of the Lake Springfield Christian Assembly.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on January 27, 1999, to determine whether or not Sangamon County Leasehold Parcel Index No. 22-32.4-176-005 qualified for an exemption from real estate taxation for the 1996 assessment year.

Mr. Don Bowers, treasurer of Lake Springfield Christian Assembly (hereinafter referred to as the "Assembly"), Mr. Randy Pim, Camp Manager of the Assembly, and Mr. Joseph P. Lindley, Clerk of the Sangamon County Board of Review were present and testified on behalf of the Assembly.

The issues in this matter include: whether the City of Springfield (hereinafter referred to as the “City”) owned the parcel here in issue; whether the Assembly leased this parcel from the City; whether this parcel is inside the City; whether the Assembly is obligated by the lease to pay the taxes on this parcel; and whether this parcel is properly subject to a leasehold assessment against the Assembly.

Following the submission of all of the evidence and a review of the record, it is determined that the City owns this parcel. It is further determined that the City leased this parcel to the Assembly. It is also determined that this parcel is within the city limits of the City. It is determined that the Assembly is obligated by the terms of the lease to pay the taxes on this parcel. It is therefore determined that this parcel is not subject to a leasehold assessment against the Assembly, but rather is subject to a fee assessment against the City pursuant to 35 ILCS 200/15-60 (c) (iii).

I therefore recommend to the assessor that the leasehold Parcel Index Number of this parcel in the name of the Assembly be canceled and that a fee Parcel Index Number be issued concerning this parcel in the name of the City and that a fee assessment be issued against the City for the 1996 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue, (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 5A.

2. On January 21, 1997, the Sangamon County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning Sangamon County Parcel Index No. 22-32.4-176-005 for the 1996 assessment year. (Dept. Ex. No. 2)

3. On July 10, 1997, the Department advised the Assembly that it was denying the exemption of this parcel because this parcel was not in exempt ownership. (Dept. Ex. No. 3)

4. The Assembly then timely filed a request for hearing. (Tr. p.8)

5. The hearing in this matter conducted on January 27, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. The City, in order to provide an adequate municipal water supply acquired the land on which to build a large artificial lake. The land acquired for the lake included the parcel here in issue. (Dept. Ex. No. 2K)

7. On April 2, 1968, the City leased a tract of lakeshore land which totaled 27.35 acres, included the parcel here in issue, for a term of 60 years to the Assembly. (Dept. Ex. No. 2K)

8. The lease recited that the City, in furtherance of the protection of its water supply, required the lessees of lake property to protect the lake from pollution, and undue erosion by promoting forestation, and the development of suitable vegetation. (Dept. Ex. No. 2K)

9. This lease listed the buildings on the property, gave permission to the Assembly to construct certain other buildings and set forth the minimum amount of money which the Assembly must spend on each building. The lease also provided that the Assembly may construct other building on the property provided the Assembly first has express written permission from the City to do so. The lease only allowed a caretaker of the Assembly to live on the leased premises. The lease provided that no intoxicating liquors could be sold on the property. (Dept. Ex. No. 2K)

10. The lease provided that the lease not be assigned or transferred without the written consent of the City. The lease expressly stated that this provision is in the lease to assist the City to obtain lessees of high character. The lease also provided that if the City should require the leased premises to be used for a public purpose, the City could terminate the lease by giving 6 months notice in writing to the Assembly. (Dept. Ex. No. 2K)

11. Paragraph 5 of the lease provided in part as follows:

U n l e s s   o t h e r w i s e   p r o v i d e d  
t h e   C u s t o d i a n   ( t h e  
A s s e m b l y )   w i l l   a l s o   p a y  
b e f o r e   t h e   s a m e   b e c o m e  
d e l i n q u e n t ,   a l l   t a x e s

a n d a s s e s s m e n t s l e v i e d o n  
a n y p a r t o f t h e l e a s e d  
p r e m i s e s a n d t h e  
i m p r o v e m e n t s t h e r e o n  
d u r i n g t h e t e r m o f t h i s  
l e a s e , . . . . ( D e p t . E x . N o .  
2 K)

12. I take Administrative Notice of the Department's decision in Docket Nos. 87-84-168 and 88-84-71 in which the Department determined that the 27.35-acre parcel leased to the Assembly by the City qualified for exemption except for the caretaker's house. Concerning the caretaker's house, the Department determined that a designated area which constituted 10% of the house and also 10% of the land was used for exempt purposes and 90% of the house and the land were used for residential purposes. It should be noted that during the 1987 and 1988 assessment years, the 27.35-acre parcel in issue in that case was located outside of the city limits of the City. (Dept. Ex. No. 2M)

13. At the time of the decision in Docket Nos. 87-84-168 and 88-84-71 the Sangamon County Parcel Index Number concerning the 27.35-acre parcel was 22-32-176-003. (Dept. Ex. No. 2M)

14. On May 18, 1990, the Department in Docket No. 89-84-480 again considered a request for exemption for Parcel Index No. 22-32-176-003 and following the decisions in Docket Nos. 87-84-168 and 88-84-71 determined that said parcel qualified for exemption except for 90% of the caretaker's house and 90% of the land beneath said house. (Appl. Ex. No. 20)

15. Following the county taking a portion of Parcel Index No. 22-32-176-003 for the expansion and reconstruction of a bridge over Lake Springfield, in 1993, the assessor changed the Parcel Index Number on this now slightly reduced parcel to 22-32-176-005. (Tr. p. 11)

16. On November 9, 1993, the City annexed this parcel into the City. This parcel, because of the annexation was transferred from Woodside Township to Capital Township. (Tr. p. 12)

17. In 1994 the Capital Township assessor assigned a separate Parcel Index Number to the caretaker's house which the Department had previously determined to be 90% taxable. That

Parcel Index Number was 22-32.4-176-005 and contained approximately one acre according to the assessor's property record card. That is the same Parcel Index Number as the Parcel Index Number on the Application for Property Tax Exemption To Board of Review which is here in issue. The application also indicates that Parcel Index No. 22-32.4-176-005 contains 1 acre of land.

18. The remainder of the property leased to the Assembly is still identified as Parcel Index No. 22-32-176-005. The assessor's property record card for Parcel Index No. 22-32-176-005 states that said parcel contains 25 acres of land. (Tr. p. 12, Appl. Ex. No. 23, Dept. Ex. Nos. 2E & 2F)

19. During 1993 the Assembly built a new camp manager's house. In the winter of 1993 Randy Pim, the camp manger of the Assembly, who had been living in the house which had previously been identified as the caretaker's house moved into the new house identified as the camp manager's house. This new camp manager's house is shown on Exhibit 1 attached to the Assembly's brief. The caretaker's house is located a substantial distance from the camp manager's house in a southwesterly direction. The new camp manager's house is located on Parcel Index No. 22-32-176-005. (Appl. Ex. No. 2)

20. During 1996, the former caretaker's house located on Parcel Index No. 22-32.4-176-005 was used for staff housing during the summer camping season. It was not used as a permanent residence as it had been when it was occupied by the camp caretaker. (Tr. p. 48)

21. During 1996 the camp manager's house was occupied by Randy Pim, his wife, and three daughters. Mr. Pim is an ordained minister of the Brotherhood of Independent Christian Churches. Mr. Pim has no ownership interest in the camp manager's house. (Tr. pp. 49 & 56)

22. Mr. Pim's duties include overseeing the camping programs, recruiting the volunteer deans for the camps, doing promotion for the camps and maintaining the camp financial records. (Tr. p. 36)

23. Mr. Pim is also responsible for seeing that the camp buildings are maintained either by volunteers or outside contractors. (Tr. p. 37)

24. The Assembly waives or reduces camp fees in cases of need. (Tr. p. 43)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property located within a city or village 35 **ILCS** 200/15-60 provides in part as follows:

. . . Also exempt are;

(c) all property owned by any city or village located within its corporate limits. Any such property leased by a city or village shall remain exempt, and the leasehold interest of the lessee shall be assessed under Section 9-195 of this Act, (i) for a lease entered into on or after January 1, 1994, unless the lease expressly provides that this exemption shall not apply; (ii) for a lease entered into on or after the effective date of Public Act 87-1280 and before January 1, 1994, unless the lease expressly provides that this exemption shall not apply or unless evidence other than the lease itself substantiates the intent of the parties to the lease that this exemption shall not apply; and (iii) for a lease entered into before the effective date of Public Act 87-1280, if the terms of the lease do not bind the lessee to pay the taxes on the leased property or if, notwithstanding the terms of the lease, the city or village has filed or hereafter files a timely exemption petition or complaint with respect to property consisting of or including the leased property for an assessment year which includes part or all of the first 12 months of the lease period. The foregoing clause (iii) added by Public Act 87-1280 shall not operate to exempt property for any assessment year as to which no timely exemption petition or complaint has been filed by the city or village . . . .

Both the Property Tax Code and Public Act 87-1280 became effective on January 1, 1994. Subparagraph (iii) is the controlling paragraph since the lease was executed on April 2, 1968, and this parcel is inside the City. I have previously found that this lease contained a provision that the Assembly would pay the taxes. The Application for Property Tax Exemption To Board of Review was filed with the Sangamon County Board of Review on December 18, 1996, which was not within the first 12 months of the lease period which began April 2, 1968. In addition, the application was not filed by the City as required by the statute.

Concerning property which is leased 35 ILCS 200/9-195 provides in part as follows:

Except as provided in Section 15-55, when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the

burden of proof is on the applicant in this matter.

Subsection (iii) of Section 200/15-60 set forth above makes the parcel here in issue owned by the City taxable to the City since the lease contains a tax clause and the lease was executed in 1968. I would therefore respectfully recommend to the assessor that leasehold Parcel Index No. 22-32.4-176-005 which is being assessed to the Assembly be cancelled. The area identified by this former leasehold number should be assigned a fee Parcel Index Number which should then be assessed to the City.

In the Assembly's Supplemental Memorandum of Law the attorney for the Assembly contends that if a lessee organization has the incidents of ownership it is the owner of the property for real estate tax exemption purposes. To support this position the Assembly's attorney cites the cases of People v. Chicago Title & Trust Co. 75 Ill.2d 479 (1979); Christian Action Ministry v. Department of Local Government Affairs Inc., 74 Ill.2d 51 (1978); and Cole Hospital, v. Champaign County Board of Review, 113 Ill.App.3d 96 (4<sup>th</sup> Dist. 1983). However, the lease in this case, contains provisions set forth in findings of fact eight through eleven, which clearly indicate that the City, as lessor reserved to itself in the lease in this matter substantial incidents of ownership to control the use of this property for the benefit of the lake, which is the City's public water supply. The People v. Chicago Title & Trust Co. case concerned an Illinois land trust and determined that the beneficiary of such a trust was the owner of the property held by the trustee. The facts in that case are clearly distinguishable from the facts in this case since this case does not involve an Illinois land trust and the City reserved to itself substantial incidents of ownership. The Christian Action Ministry case and the Cole Hospital case concerned creative financing schemes used to finance the purchase or remodeling of the building in those respective cases. Those cases are again distinguishable from the case here in issue which concerns property



owned by the City which is leased to the Assembly pursuant to a straight forward 60 year lease which is not part of a financing arrangement.

I n t h e o r i g i n a l b r i e f f i l e d b y t h e A s s e m b l y ' s a t t o r n e y h e c o n t e n d e d t h a t t h e 60- y e a r l e a s e o f t h e p a r c e l i n t h i s c a s e w a s i n e f f e c t t h e s a m e a s o w n e r s h i p o f t h e p r o p e r t y . F i n d i n g o f f a c t s e i g h t t h r o u g h e l e v e n c l e a r l y d e m o n s t r a t e t h a t t h e C i t y c h o s e t o l e a s e t h e s h o r e l i n e o f t h e l a k e r a t h e r t h a n t o c o n v e y t h e l o t s , t o m a i n t a i n c o n t r o l o f t h e u s e o f t h e s h o r e l i n e a n d t o b e a b l e t o t a k e p o s s e s s i o n o f t h e s h o r e l i n e f o r p u b l i c p u r p o s e s s h o u l d t h e n e e d a r i s e . I n t h i s c a s e t h e l e a s e b e t w e e n t h e C i t y , a s o w n e r a n d t h e A s s e m b l y , a s l e s s e e , w a s a s t r a i g h t f o r w a r d l e a s e w i t h t h e C i t y r e t a i n i n g s u b s t a n t i a l i n c i d e n t s o f o w n e r s h i p . C o n s e q u e n t l y t h e l e s s e e ' s i n t e r e s t o f t h e A s s e m b l y w a s n o t t h e e q u i v a l e n t o f o w n e r s h i p .

The attorney for the Assembly in his Supplemental Brief cites the case of Childrens Development Center, v. Olson, 52 Ill. 332 (1972) in which the Court held that a lease by a religious institution to school was not a lease for profit and therefore the leased parcel qualified for exemption. However, in this case the issue is not whether the lease is for profit but rather

whether the lessee is required to pay the taxes on the parcel. There is no dispute but that the lease requires the lessee, the Assembly, to pay the taxes on this parcel.

It is clear from the testimony of the Sangamon County Clerk of the Board of Review, Mr. Joseph P. Lindley, who testified on behalf of the Assembly that the Parcel Index Number on the application for exemption is the Parcel Index Number for the 1 acre parcel identified as the caretaker's house. It should also be pointed out that said parcel is the only portion of the parcel leased to the Assembly, which is currently taxable. Also the Application for Property Tax Exemption To Board of Review states that the parcel here in issue contains one acre, which is the size of the caretaker's house parcel as stated on the assessors property record card. The property record card concerning the remaining parcel where the camp manager's house is located states that it contains 25 acres. I therefore conclude that the Assembly although it intended to apply for exemption of the camp manager's house actually applied for exemption of the caretaker's house.

As previously set forth, 35 **ILCS** 200/15-60 also includes the following language:

Also exempt are:

(c) all property owned by, any city or village located within its incorporated limits. Any such property leased by a city or village shall remain exempt, and leasehold interest of the lessee shall be assessed under Section 9-195 of this Act, (i) for a lease entered into on or after January 1, 1994, unless the lease expressly provides that this exemption shall not apply;

It is submitted based on subsection (i), if the City were to execute a new lease with the Assembly, even with a tax clause in it, the parcel here in issue might well qualify for exemption since it was determined in Department Docket Nos. 87-84-168, 88-84-71 and 89-84-480 that the Assembly is a religious and charitable organization.

I therefore respectfully recommend to the assessor that Leasehold Parcel Index No. 22-32.4-176-005 issued in the name of the Assembly be cancelled and that a fee assessment be issued concerning this parcel in the name of the City and that said parcel be assessed to the City for the 1996 assessment year.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
June 16, 1999